Chapter – 6

General Central Legislations Re: Hazardous Substances

India has a large body of laws dealing directly or indirectly with the control of environmental pollution and conservation of natural resources. These laws are in the form of around 200 Central and State enactments. However, for the purpose of this study, the salient features of following general laws are

1. **Central enactments on Water Pollution** - The Orient Gas Company Act, 1857; The Serais Act, 1867; The Northern India Canal and Drainage Act, 1873; The Obstruction of Airways Act, 1881; The Indian Fisheries Act, 1897; The Indian Ports Act, 1901; The Indian Forest Act, 1927; The Factories Act, 1948; The Damodar Valley Corporation (Prevention of Pollution of Water) Regulation Act, 1948; The Model Public Health Act, 1953; The River Boards Act, 1956; The Merchant Shipping Act, 1958; Water (Prevention and Control of Pollution) Act, 1974; Water (Prevention & Control of Pollution) Cess Act, 1977; The Coast Guard Act, 1978; The Cost Guard Act, 1981.


**State Enactments on Air Pollution** - The Bengal Smoke Nuisance Act, 1905; The Bombay Smoke Nuisance act, 1912; The M.P. Municipal Corporation Act, 1956; and the Gujrat Smoke Nuisance Act, 1963.


In addition to the above mentioned Central and State laws, some other state enactments which deserve a mention here are The A.P. Agricultural Pest and Disease Act, 1919; The Mysore Destructive Insects & Pests Act, 1919; The Assam Agricultural Pests and Disease Act, 1954; The U.P. Agricultural Disease & Pests Act, 1954; The Kerala Agricultural Pests and Disease Act, 1958; The A.P. Improvement Schemes Act, 1949; The Acquisition of Land for Floor Control and Prevention of Erosion Act, 1955; The Bihar Waste Lands (Reclamation, Cultivation and Improvement) Act, 1946 and The Delhi Restriction of Land Uses Act, 1964.
discussed. The focus of discussion is on an analysis as to how far the provisions contained therein are capable of controlling and regulating hazardous substances:

**Pre-Independence Laws**

- The Oriental Gas Company Act, 1857
- The Indian Penal Code, 1860
- The Indian Explosives Act, 1884
- The Explosive Substances Act, 1908
- The Destructive Insects and Pests Act, 1914
- The Poisons Act, 1919
- The Indian Boilers Act, 1923
- The Petroleum Act, 1934
- The Drugs and Cosmetics Act, 1940

**Post-Independence Laws**

- The Factories Act, 1948
- The Industries (Development and Regulation) Act, 1951
- The Mines Act, 1952
- The Inflammable Substances Act, 1952
- The Prevention of Food Adulteration Act, 1954
- The Mines and Minerals (Regulation and Development) Act, 1957
- The Offshore Areas Mineral (Development and Regulation) Act, 2002
- The Code of Criminal Procedure, 1973
- The Motor Vehicles Act, 1988

The salient features of the above stated general central enactments will be discussed in this chapter in brief. The response of the judiciary shall also be
seen with the help of some relevant cases. The legislative efforts in this
direction can be traced from the year 1857 when the Oriental Gas Company
Act was enacted which made it obligatory for the Orient Gas Company,
responsible for the supply of gas, to prevent the gas from escaping. Financial
liability was imposed upon the company in case of failure. The main features of
these enactments with special reference to hazardous substances may be
summarised with the help of the following table which has been prepared to
give a general idea of their scope and relevant provisions at a glance:

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6.1 The Oriental Gas Company Act, 1857

The Oriental Gas Company Act, 1857 (hereinafter 'the Act') is the oldest law in India dealing with air and water pollution. The Act authorised the Oriental Gas Company Ltd. to manufacture and supply the Gas in Calcutta and other towns and places. The company was empowered to open and break up the soil, sewers, drains or tunnels for the purpose of laying down the pipes, conduits, service-pipes and other works necessary for the making or supply of gas. However, during the execution of such work, if the gas escapes and the company receives a notice thereof, it was made obligatory for the company to...

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3. For extension of the Act to certain places in India, see the Oriental Gas Company Act, 1867 (Act 11 of 1867)
effectually prevent the gas from escaping and wholly remove the cause of complaint within twenty four hours. In case of failure, the company was to forfeit a sum of fifty rupees for each day during which the gas was suffered to escape.4

If the work resulted in the fouling of water of any stream, reservoir, aqueduct pond, or place, it was provided that the company should forfeit, for every such offence, a sum not exceeding one thousand rupees and an additional sum not exceeding five hundred rupees for each day during which fouling continued.5 In case of a person whose water was so fouled, the company was to forfeit a sum not exceeding two hundred rupees, and a further sum, not exceeding one hundred rupees for each day during which the offence continued.6 All penalties, forfeitures, damages and expenses under the Act were recoverable by summary proceeding before a Magistrate.7

Therefore, the Act conferred certain powers on the Oriental Gas Company Ltd. to open and break up the soil, sewers, drains or tunnels for the purpose of supplying the gas to inhabitants, but if in the execution of such powers any damage was caused, the company had to compensate.

6.2 Indian Penal Code, 1860

Chapter XIV of Indian Penal Code,8 consisting of 28 Sections, deals with public nuisance9 i.e. offences affecting the public health, safety, convenience,

4. Section 16.
5. Section 15.
6. Section 17.
7. Section 24.
8. Act No. 45 of 1860.
9. Section 268, I.P.C. defines public nuisance as 'a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage'.
decency and morals. Chapter XIV is a comprehensive mandate on public nuisance and makes punishable the following cases of nuisance:

1. Spreading of infections (Sections 269-271)
2. Fouling water of public spring or reservoir (Section 277).
3. Making atmosphere noxious to health (Section 278).
4. Rash driving (Section 279).
5. Rash navigation (Section 280)
6. Endangering public way and line of navigation (Sections 281-283).
7. Negligent conduct with respect to poisonous substance, fire or combustible matter and explosive substance (Sections 284-286).
8. Negligent conduct with respect to machinery, buildings and animal (Sections 287-289)

Section 290 punishes those cases of nuisance which have not been specifically covered under the above stated provisions, for example, nuisance by noise. In order that a person may be convicted under Section 290, I.P.C., there must be public nuisance by doing an act or an illegal omission causing any common injury, danger or annoyance to the public.  

The word ‘nuisance’ is derived from the French word ‘nuire’, which means ‘to do hurt or to annoy’. It has been defined by Stephen to be anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another and not amounting to trespass. In Achammagari Venkata Reddy v. The State, the Court analysed the offence of public nuisance as under:

a) it may be caused either by an act or illegal omission,
b) the effect of the act or omission thereof must be either injury, danger or annoyance,

c) the injury must be caused either to the public or to that portion of the public who dwell or occupy property in the vicinity, or
d) threatens the necessity of persons who may have occasion to use any public right.

Bearing these principles in mind, the Court observed that a person commits a public nuisance if he by raising the level of and crossbundung a public way causes stagnation of water leading to breeding of mosquitoes etc, giving rise to offensive smell and causing danger to the health or annoyance of the persons living in the vicinity.

In *Kirori Mal Bishambar Dayal v. The State*, the petitioner was running a metal factory in a residential locality for the manufacture of brass utensils. The owners and occupiers of residential buildings in the vicinity of the factory complained that the noise caused by the factory interfered unreasonably with the comfort and enjoyment of private property, that the vibrations caused by the heavy machinery were shattering the foundations of their buildings and that the smoke emitted by the chimneys were contaminating the general atmosphere.

The Court held that although a person is at liberty to carry on any trade or business on the property belonging to him he has no right to do so if such trade or business deprives another of the reasonable and comfortable use of his property. Even a lawful trade would become a nuisance if it interferes with the comfort and enjoyment of the neighbours, gives offence to their senses or obstructs the reasonable use of property. A manufacturing plant situated at a

considerable distance from human habitation may not be nuisance while a similar plant situated in the heart of a town where a large number of people reside or carry on business may be a nuisance. A particular trade or business may be lawful to start with but may become a nuisance by reason of changed circumstances such as the growth of population. The Court further held

The question whether a particular trade or business is or is not a nuisance can be determined only after taking into consideration a number of circumstances such as the place where it is located or carried on, the number of people whose rights are prejudicially affected thereby and the extent of the injury, discomfort and annoyance caused to normal human beings. The mere fact that the factory was allowed to operate for several years without any objection having been raised by the neighbours would not render the petitioner immune from punishment if it is found that its existence constitutes a nuisance to the people of the neighbourhood. It has been held repeatedly that no prescriptive right can be acquired to maintain, and no length of time can legalise, a public nuisance.\textsuperscript{14}

The Court drew support from the following observations made by their Lordships of the Court of Appeal in \textit{Andrea v. Selfridge & Company Ltd} \textsuperscript{15}

I certainly protest against the idea that, if persons, for their own profit and convenience, choose to destroy even one nights rest of their neighbours they are doing something which is excusable. To say that the loss of one or two nights rest is one of those trivial matters in respect of which the law will take no notice appears to me to be quite a misconception, and, if it be a misconception existing in the minds of those who conduct these operations, the sooner it is removed the better.

Therefore, if one works for his own benefit and causes injury, annoyance, discomfort or inconvenience to others, he is committing a wrong. Whatever may be the nature of the nuisance, the individual's freedom and liberty can not be compromised by any other person except in accordance with law. If one

\textsuperscript{14} \textit{Id} at 13.

\textsuperscript{15} (1937) 3 All ER 255.
works for gain and causes discomfort to others, he can not avoid liability. Public health can not be allowed to suffer.

6.3 The Indian Explosives Act, 1884

The Indian Explosives Act, 1884\(^{16}\) (hereinafter ‘the Act’) was drawn on the model of the English Explosives Act, 1875 ‘to deal with the subject of explosives in its entirety and furnish the public, as well as Government Officials, with an easy means of ascertaining their duties, responsibilities and powers respecting articles which by their inflammable, explosive or dangerous nature imperil the public safety’. However, after independence, many large and small companies began to manufacture high explosives and so the Act, which was based on the old British pattern, resulted in difficulties for the industry. With a view to removing the short comings and to obviate the difficulties, the Act was suitably amended in 1978.

The Explosives Act regulates the manufacture, possession, use, sale, transport, import and export of explosives.\(^{17}\) These activities are prohibited except under a licence granted by the Central Government in accordance with the rules made in this behalf.\(^{18}\) The licensing authority, after making an inquiry, grants a licence on being satisfied that either the person himself or his employee possesses technical know-how and experience in the manufacture of explosives and, for any other purpose, has a good reason for obtaining the same.\(^{19}\) A licence should be refused in respect of any prohibited explosive, in case of a person

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17. For definition of 'explosive' see Section 4(d).
19. Section 6B.
prohibited by the Act or of unsound mind or on grounds of public peace and security. A person is prohibited from carrying on any activity under the Act if he is under eighteen years of age or is convicted of any offence involving violence or moral turpitude or has executed a bond for keeping peace or be of good behaviour under Chapter VIII of the Code of Criminal Procedure, 1973 or whose licence has earlier been cancelled.

The licensing authority has power to impose additional licensing conditions or vary them and suspend or revoke licences. Any person aggrieved by an order of licensing authority may prefer an appeal to the appellate authority within the period prescribed under the provisions of the Limitation Act, 1963. The appellate authority should dispose of the appeal after giving the appellant a reasonable opportunity of being heard.

Any officer authorised by the Central Government has power to enter, inspect and examine any place, aircraft, carriage or vessel and to search and seize any explosive. In case of an accident resulting in loss of human life or serious injury to person or property, the person concerned should bring the matter to the notice of Chief Controller of Explosives and to the officer in charge of the nearest police station. The naval, military, air force authority or the District Magistrate, as the case may be, should hold an inquiry into the causes of the accident and make a report to the Central Government. In case of more

20. Section 6C.
21. Section 6A.
22. Sections 6D & 6E.
23. Section 6F.
24. Section 7.
25. Section 8.
serious accidents, the Central Government may appoint Chief Controller of Explosives or any other competent person as inquiry officer to make a report.\textsuperscript{27}

Contravention of the provisions of the Act or rules made thereunder results in criminal liability which may be imprisonment upto three years or fine upto five thousand rupees or both.\textsuperscript{28} The penal provisions apply to companies and every person who was incharge of, or responsible to the company at the time the offence was committed, is deemed to be guilty of the offence. Likewise, if the offence is committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, they are also deemed to be guilty of the offence. However, it can be proved that the offence was committed without knowledge and even after exercising all due deligence to prevent its commission.\textsuperscript{29} The penal provisions extend to abetment and attempts also.\textsuperscript{30} A person committing dangerous offences which tend to cause explosion or fire, may be apprehended without a warrant.\textsuperscript{31}

If the manufacture of an explosive is carried out in contravention of any of the conditions of the licence, that contravention itself, without anything more, becomes an offence for which the licensee himself is liable. The obligation is upon the licensee himself to see that the prohibition against the manufacture of an explosive in contravention of the conditions of the licence is not evaded or relaxed. The responsibility is upon the licensee for whatever is done in the

\textsuperscript{27} Section 9A.
\textsuperscript{28} Section 9B.
\textsuperscript{29} Section 9C.
\textsuperscript{30} Section 12.
\textsuperscript{31} Section 13.
licenced premises in connection with the manufacture, possession or sale of explosives.

When safety of the people at large and public property is at stake and if the safety measures require that some hardship be undergone by those who want to deal in dangerous substances, it can never be said that the decision of the authority is in any way arbitrary or unreasonable. The Indian Explosives Act, 1884 and the Explosives Rules, 1983 are meant for the safety of the public property and the people.

The use of explosives, at present, has considerably increased in connection with various works undertaken by the Government as well as private companies and it is likely that their use will further increase in future. The Explosives Act and the rules made thereunder serve the purpose of protecting the public against the dangerous nature of explosives by regulating all the dealings in such substances.

6.4 The Explosive Substances Act, 1908

In order to supplement the existing law contained in the Indian Explosives Act, 1884, Indian Arms Act, 1878 and Indian Penal Code, 1860, the Explosive Substances Act, 1908 (hereinafter ‘the Act’) was enacted on the lines of the English Explosive Substances Act, 1883. The purpose of the Act is to deal with anarchist crimes. It provides for the punishment of a person who causes an explosion likely to endanger life or property or attempts to cause such an

32 State v Ismail Shakur Morani, AIR 1958 Bombay 103
33 Banaskantha District Fire Works Association v District Magistrate, AIR 1989 Gujarat 48
34 Act 6 of 1908 As amended by Act 3 of 1951 and Act No 54 of 2001
explosion or makes or has in his possession any explosive substance with intent to endanger life or property. It further makes the manufacture or possession of explosive substances for any other than a lawful object a substantive offence and throws on the person who makes or is in possession of any explosive substance the onus of proving that the making or possession was lawful. It provides for the punishment of both the principals and accessories.

Punishment for unlawfully and maliciously causing explosion likely to endanger life or property is imprisonment for life or rigorous imprisonment which should not be less than ten years and fine. In case of an explosion by means of 'special category explosive substance', the punishment is death penalty or rigorous imprisonment for life and fine. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property shall be -

a) in case of any explosive substance, imprisonment for life or imprisonment for a term which may extend to ten years and fine. and

b) in case of any special category explosive substance, rigorous imprisonment for life or rigorous imprisonment for a term which may extend to ten years and fine.

Punishment for making or possessing explosives under suspicious circumstances, unless shown that making or possession was for a lawful object, shall be -

35. Section 2(a) defines an 'explosive substance' as 'any materials for making an explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement'.

36. Section 3. Section 2(b) was inserted by the Amendment Act of 2001 to define the expression "special category explosive substance" which includes research development explosive (RDX) and other similar types of explosives and a combination thereof and remote control devices causing explosion.

37. Section 4.
a) in case of any explosive substance, imprisonment for a term which may extend to ten years and fine; and

b) in case of any special category explosive substance, rigorous imprisonment for life or rigorous imprisonment for a term which may extend to ten years and fine.  

However, for the trial of any person under the Act, consent of the Central Government is necessary.

6.5 The Destructive Insects and Pests Act, 1914

The Destructive Insects and Pests Act, 1914 (hereinafter ‘the Act) was enacted to prevent the introduction into India and the transport from one State to another of any insect, fungus or other pest, which is or may be destructive to crops. The Central government may, by notification in the Official Gazette, prohibit or regulate the import into India and transportation from one State to another of any article or class of articles or insects likely to cause infection to any crop. Contravention of the provisions is made punishable with fine which may extend to two hundred and fifty rupees and subsequent conviction with fine which may extend to two thousand rupees.

In S.R.I. Roller Mills Pvt. Ltd. v. Union of India, the Bombay High Court held that Section 3 of the Act gives power to the Central Government ‘to prohibit or regulate... the import into India... of any article or class of articles...’
likely to cause infection to any crop or of insects generally or any class of insects'. Therefore, the import of any article likely to infect crops can either be banned or regulated. The actual article imported need not be a 'crop'. If pulses which are imported into India are infected with any harmful insects or fungus of the like which may adversely affect any crops in the country, there is no reason why U/S 3 of the Act, then import can not be regulated or banned.

Thus the Act, which was prepared after consultation with experts and various bodies and persons interested in gardening and agriculture, seeks to prevent the import and transport of any insect, fungus or other pests in order to protect plants, fruits and seeds. The controls on import and transport would prevent the entry of exotic diseases through such imported or transported consignments.

6.6 The Poisons Act, 1919

The Poisons Act, 191955 (hereinafter 'the Act') deals with the importation, possession and sale of poisons. A 'poison' is any substance specified as a poison in a rule made or notification issued under the Act.56 The Act empowers the State Government to make rules for the purpose of regulating the possession for sale or the sale of any specified poison, whether wholesale or retail. The rules may provide guidelines for the grant of licences to only certain classes of persons, the fees to be charged for such licences, the classes of persons to whom alone any poison may be sold, the maximum quantity which may be sold to any one person, the maintenance of registers of sales by vendors and their inspection, the labeling, packaging or coverings for safe custody of

45 Act 12 of 1919 As amended by Acts 38 of 1920, 47 of 1958 and 4 of 1986
46 Section 5
poisons and inspection and examination of any such poison.\textsuperscript{47} The Central Government is empowered to prohibit the import of any poison into India except under a licence and may by rule regulate the grant of such licences.\textsuperscript{48}

The State Government may also, by rule, restrict the possession of any specified poison in any local area in which the use of such poison for committing murder or mischief by poisoning cattle becomes frequent. It may be directed that the breach of any such rule shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, together with confiscation of the poison in question.\textsuperscript{49}

Contravention of the provisions of the Act or rules made thereunder has been made punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both. In case of subsequent conviction, the offender is to be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both. The poison in question may also be liable to confiscation.\textsuperscript{50} The District Magistrate, the Sub-Divisional Magistrate or the Commissioner of Police have power to issue search warrant for the search of any place where any poison is possessed or sold in contravention of the Act or rules made thereunder or any poison liable to confiscation is kept or concealed.\textsuperscript{51} The Central Government and the State Government have concurrent powers to make rules generally to carry out the

\textsuperscript{47} Section 2.
\textsuperscript{48} Section 3.
\textsuperscript{49} Section 4.
\textsuperscript{50} Section 6.
\textsuperscript{51} Section 7.
purposes and objects of the Act.\textsuperscript{52} A medical or veterinary practitioner has been accorded protection under the Act for anything done in good faith in the exercise of his profession.\textsuperscript{53}

In \textit{Hukum Chand v. State},\textsuperscript{54} the applicant’s brother had a licence to sell certain poisons as a duly authorised licensee. After his death, the applicant, who was residing in the same house, came into the possession of these poisons. He was convicted for being in possession of a number of poisons without any licence for the same. He filed a revision application in Allahabad High Court.

The Court held that the applicant could not be convicted merely for the possession of the poisonous substances specified in the Schedule, unless it was further proved by the prosecution that the said possession was for ‘sale’. The circumstances did not indicate that he had any intention of selling them without a licence. He never concealed his possession and disclosed the same to the authorities after the death of his brother. His conduct throughout had been honest, straightforward and innocent. There can, therefore, be no doubt about his bonafides. In these circumstances, the conviction was set aside.

The object of the Act is to regulate the possession for sale and the sale, whether wholesale or retail of poisons and the importation of the same. The nature of trade in poison is such that no body can be considered to have an absolute right to carry on the same. It is a business which can be termed even as inherently dangerous to health and safety of the society. A law in such circumstances can regulate the trade. This position is well settled and it would

\begin{itemize}
\item \textsuperscript{52} Section 8.
\item \textsuperscript{53} Section 9.
\item \textsuperscript{54} AIR 1957 Allahabad 705.
\end{itemize}
be pedantic to cite all the authorities on this point. It is also not necessary that
the same substance should be declared as poison for the entire country. The
notification and its application to any area would depend on the necessity to
declare the substance as poison on the particular facts and situation prevailing
in that area and the need to regulate the possession and sale in that area. No
question of discrimination can arise in such circumstances.55

6.7 The Indian Boilers Act, 1923

The Indian Boilers Act, 192356 (hereinafter 'the Act') was enacted to secure
uniformity throughout India in all technical matters connected with boiler
regulations, e.g., standards of construction, maximum pressure, and to insist on
the registration and regular inspection of all boilers57 throughout India. The
State Government may appoint Chief Inspector, Deputy Chief Inspectors and
Inspectors to exercise powers and perform duties under the Act and to advise
the owners regarding proper maintenance and working of boilers.58 The owner
can use the boiler only when it has been registered; has obtained a certificate or
provisional order authorising the use; at a pressure not exceeding the maximum
pressure recorded in such certificate or provisional order; and in accordance
with the rules made by the State Government in this behalf.59 The Chief
Inspector may withdraw or revoke any certificate or provisional order if it was
obtained fraudulently or the boiler has ceased to be in good condition or is in

56. Act 5 of 1923. As amended by Acts 9 of 1929; 11 of 1937; 5 of 1942; 17 of 1943; 34 of 1947;
57. 'Boiler' means any closed vessel exceeding 22-75 litres in capacity which is used
expressly for generating steam under pressure and includes any mounting or other
fitting attached to such vessel, which is wholly or partly under pressure when steam is
shut off. [section 2(b)].
58. Section 5.
59. Section 6.
charge of a person who is incompetent or not holding the certificate as required by the rules.\textsuperscript{60}

Any person aggrieved by the order of Chief Inspector may, within thirty days, file an appeal to the appellate authority.\textsuperscript{61} The Central Government has power to revise the order of appellate authority.\textsuperscript{62} Illegal use of boiler has been made punishable with fine which may extend to five hundred rupees and in case of a continuing offence, with an additional fine which may extend to one hundred rupees for each day.\textsuperscript{63} Fraudulently marking upon a boiler a registration number which has not been allotted to it, is punishable with imprisonment which may extend to two years, or with fine, or with both.\textsuperscript{64}

A Central Boilers Board has been constituted under the Act for the purpose of making regulations.\textsuperscript{65} The Central as well as State Government have been empowered to make rules,\textsuperscript{66} the breach of which is made punishable with fine which may extend to one hundred rupees.\textsuperscript{67}

The Act, therefore, provides mainly for the safety of life and property of persons from the dangers of explosion and the achievement of uniformity of practice in regard to the construction, operation, inspection, registration and maintenance of boilers. It should be considered as an important piece of legislation in view of increasing industrialisation which has necessitated the use of high pressure boilers.

\textsuperscript{60} Section 11.
\textsuperscript{61} Section 20.
\textsuperscript{62} Section 20A.
\textsuperscript{63} Section 23.
\textsuperscript{64} Section 25(2).
\textsuperscript{65} Sections 27A & 28.
\textsuperscript{66} Sections 28A & 29.
\textsuperscript{67} Section 30.
6.8 The Petroleum Act, 1934

The Petroleum Act, 1934 (hereinafter ‘the Act’) was enacted for the purpose of consolidating and amending the law relating to the import, transport, storage, production, refining and blending of petroleum. These activities are to be carried on in accordance with the conditions of any licence granted and the rules made by the Central Government in this behalf. The Central Government has power to authorise any officer to carry out inspection and sampling of petroleum, standard test apparatus, re-testing in certain cases and enter and search any place for the purpose of implementing the provisions of the Act.

In case of any accident resulting in loss of human life or serious injury to person or property, the occupier or the person incharge of the petroleum or carriage or vessel has to give a notice thereof to the nearest Magistrate or officer-in-charge of the nearest police station and to the Chief Controller of Explosives. The Magistrate should then make an inquiry into the causes of accident and submit a report to the Central Government, the Chief Controller of Explosives and the State Government.

Whoever contravenes the provisions of the Act is punished with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both. For subsequent offences, the punishment

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69. ‘Petroleum’ means any liquid hydrocarbon or mixture of hydrocarbons, and any flammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon. [Section 2(a)].


71. Sections 27 & 28.
is simple imprisonment which may extend to three months or fine up to five thousand rupees or both.22

Strict adherence to statutory provisions and the Petroleum Rules and their compliance can not be underscored having regard to the nature of produce required to be secured, their safety and prevention of any adulteration or misuse thereof. The licensee, if he violates the terms and conditions of the Petroleum Rules or violates any statutory provision governing the storage of petroleum products, the licensee shall be deemed to have ceased to have the right to use site for storing petroleum.23

6.9 The Drugs and Cosmetics Act, 1940

The Drugs and Cosmetics Act, 194074 (for short 'the Act') regulates the import, manufacture, distribution and sale of drugs75 and cosmetics76 in the country. The problem of adulteration of drugs and also of production of spurious and sub-standard drugs poses a serious threat to the health of the community. Similarly, application of various organic synthetics and

72. Section 23.
75. 'Drug' includes- (i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes; (ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette; (iii) all substances intended for use as components of a drug including empty gelatin capsules; and (iv) such devices intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette, after consultation with the Board. (Section 3(b)).
76. 'Cosmetic' means any article intended to be rubbed, poured, sprinkled or sprayed on or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic. [Section 3(a)].
intermediates to the formulation of cosmetics may have deleterious effects on
the health of the people. Contact dermatitis is one of the evil effects of using
certain cosmetics. Apart from dermatitis, there is also the risk of cumulative
toxicity of azo and other synthetic dyes used in the manufacture of lipsticks,
etc. The original Drugs Act, 1940 was amended by Act 21 of 1962 to include
regulation of substandard and misbranded cosmetics also. Initially the
provisions of the Act did not apply to Ayurvedic or Unani systems of medicine.
Subsequently, after the Amendment Act 13 of 1964, these medicines were also
brought within the scope of the Act.

The Act provides for the constitution and establishment of the Drugs Technical
Advisory Board, the Central Drugs Laboratory and the Drugs Consultative
Committee to carry out functions assigned to them. Government Analyst and
Inspectors are to be appointed by the Central Government or the State
Government. The Central Government has powers to prohibit the manufacture,
sale or import of drugs and cosmetics in public interest and power to make
rules. ‘Standards of quality’ to be complied with have been provided in the
Second Schedule. The provisions of the Act apply to government departments
and companies also.

Different scales of punishment have been provided for the first offence and
subsequent offences including mandatory minimum. Penalties may range from
three months imprisonment to life imprisonment and fines from five hundred
rupees to not less than ten thousand rupees as per the nature of the offence. In
addition, the Act provides for the confiscation of property and apparatus etc. in

77. See Drugs and Cosmetics Rules, 1945.
certain cases. Some cases may be tried summarily provided the term of imprisonment does not exceed one year. No Court below the rank of a Metropolitan Magistrate or a Judicial Magistrate of the first class can try the case under the Act.

The Act is basically a consumer protection legislation and is mainly concerned with the standards and purity of drugs and cosmetics. To promote voluntary consumer movement and to ensure involvement of recognised Consumer Associations, the Act confers necessary powers on recognised Consumer Associations to initiate legal action and launch prosecution on the basis of test reports given by Government Analyst.

In *Chimanlal Jagiivandas Sheth v. State of Maharashtra,* the appellant was charged for storing and manufacturing large quantities of spurious drugs e.g. absorbent cotton wool, roller bandages, gauze and other things and passing them off as goods manufactured by a firm of repute. The High Court convicted him and sentenced him to undergo rigorous imprisonment for three months and to pay a fine of Rs 500. On an appeal to the Supreme Court, the Court observed that the definition of 'drugs' under Section 3(b) of the Act is comprehensive enough to include not only medicines but also substances intended to be used for or in the treatment of diseases of human beings or animals. The expression 'substances' includes 'things' like absorbent cotton wool, roller bandages and gauze. These are essential materials for treatment in surgical cases. The Court held:

78. AIR 1963 SC 665.
The legislature designedly extended the definition of "drugs" so as to take in substances which are necessary aids for treating surgical or other cases. The main object of the Act is to prevent substandard drugs, presumably for maintaining high standards of medical treatment. That would certainly be defeated if the necessary concomitants of medical or surgical treatment were allowed to be diluted; the very same evil which the Act intends to eradicate would continue to subsist.

The Court, therefore, found the appellant guilty of an anti-social act of a very serious nature and held that 'the punishment of rigorous imprisonment for three months was more lenient than severe'.

In *Sk. Amir v. State of Maharashtra*, the appellant was apprehended by a railway constable with a parcel containing 95,000 capsules commonly used for intoxication. The Judicial Magistrate found him guilty of stocking for sale a misbranded drug without a licence and imposed upon him a fine of Rs. 1200. In appeal, the Sessions Judge acquitted him on the ground that the mere fact that the appellant was carrying the parcel would not justify the inference that the drug was stocked for sale. This decision of the learned Sessions Judge was set aside in appeal by the High Court of Bombay which held that the prosecution had proved conclusively that the accused had stocked the drug for sale and sentenced the appellant to the minimum sentence of one year's imprisonment prescribed by the Act.

On a further appeal to the Supreme Court, Chandrachud, J. came to the conclusion that the substance which the appellant was found carrying is a 'drug' and a 'misbranded drug' and that he had no valid licence to stock it for sale. He observed:

79. AIR 1974 SC 469.
If anyone keeps or carries a drug on his person in contravention of the terms of the Act and it is proved that the drug is kept or carried for sale, the act must fall within the mischief of the law under consideration. ‘Keeping’ for sale is of the essence of the matter, not the mode and the manner of keeping. To keep for sale is to stock for sale. The large quantity of 95,000 capsules found in the possession of the appellant leaves no doubt that he had stocked or kept the drug for sale. It could not have been meant for his personal use and his defence that he had received the parcel on behalf of another person, not knowing what it contained, was rightly rejected by all the three Courts.

The appeal was accordingly dismissed and the order of the High Court was confirmed.

In State of Karnataka v. Dr. T.V. Ganji, the plaintiff claimed that the defendants (Government Officials) were harassing him by illegally and unnecessarily searching, inspecting and seizing his goods and medicines manufactured and stored by him. He asked for a permanent injunction restraining the defendants. The Munsiff, and in appeal, the Civil Judge granted temporary injunction. The defendants, being aggrieved by the grant of temporary injunction, filed a revision petition in the High Court. They contended that the product was seized in accordance with the law and sent to the Chemical Examiner who found the sample as ‘unfit for human consumption’ and therefore, the drug seized by them was an adulterated drug within the meaning of Section 9B of the Act. If such a dangerous product would be openly available in the market, it would be a health hazard. The defendants further contended that the plaintiff was in the habit of filing suits and obtaining temporary injunctions and withdrawing the suits after achieving

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80. *Id.* at 670-71.
81. *AIR* 1986 Kant. 94.
his ends. They placed on record a number of such suits. Moreover, the licence granted to the plaintiff had expired.

The High Court held that the drug in question was an adulterated drug being manufactured without a valid licence. Such a drug could not be manufactured at all under the provisions of the Act. The Court observed:

The grant of temporary injunction in such serious matters would enable the plaintiff to manufacture and sell such adulterated drugs under the guise of a temporary injunction granted by the courts. The Court should not grant temporary injunction in such serious matters especially where the health of the public is to be affected to a large extent. The parties can not be allowed to manufacture or sell such drugs with the help of a temporary injunction... The courts should bear in mind that the parties are likely to misuse the equitable relief of temporary injunction granted to them in such cases.\(^\text{82}\)

Therefore, the orders passed by the lower courts were held to be opposed to the provisions of law being capricious, perverse and unreasonable. The revision was allowed and the temporary injunction granted by the Munsiff and confirmed by the Civil Judge was vacated.

In *State of M.P. v. M/s Asian Drugs*,\(^\text{83}\) the Court held:

Where a particular act is made statutorily penal, the question of mens rea does not arise, if the act is proved. In the instant case, manufacturing of drugs contrary to the terms of the licence granted to the manufacturer is not only prohibited, but also made penal. It is not open to the Court to insist for any proof of guilty mind on the part of the accused contravening the terms of the licence.

In *Balwant Rai v. State of J&K*,\(^\text{84}\) the High Court held that:

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82. *Id.* at 98.
83. 1990 Cri.L.J. 105 (M.P.)
the provisions of the 1940 Act and the Rules are made in public interest at large to ascertain purity and achieving sale and supply of standard drugs and the medicine to the public at large. Regulating the same by issue of licence under the Act and the Rules in order to prevent adulteration and supply etc of substandard quality of Drugs and Cosmetics is a reasonable restriction placed on a dealer who deals in wholesale or retail and can not be said to be violative of Article 19 of the Constitution of India.

The intention of the Legislature is that the drugs which are hazardous or without therapeutic value or without any therapeutic justification should not be allowed to be manufactured, sold or distributed. It is clearly a reasonable restriction on the freedom of carrying business by any person. The power given to the Central Government is neither uncontrolled nor unguided. A particular drug would be banned only if the Government is satisfied about the hazardous nature of the drug or its nil therapeutic value or no therapeutic justification. Above all, the Government is also to be satisfied that public interest warrants such prohibition. All these factors constitute definite guidelines to the Central Government before prohibiting manufacture, sale or distribution of a drug or cosmetic and, therefore, removes the element of arbitrariness. Thus, a notification completely prohibiting manufacture and sale of drug is not either violative of Article 14 of the Constitution of India or Article 19(1)(g) thereof. Such a notification is not liable to be quashed as being violative of the fundamental rights. Whether the drug should be prohibited or not on the ground that it was injurious to the public health is essentially a matter dealing with the policy decision of the State and hence can not also be challenged as violative of the principles of natural justice.

85 M/s E Merck (India) Ltd v Union of India. AIR 2001 Delhi 326
86 Systopic Laboratories (Pvt) Ltd v Di Prem Gupta. AIR 1994 SC 205
87 Uni-San Pharmaceuticals v Union of India. AIR 2002 Kerala 72
In *Amery Pharmaceuticals v. State of Rajasthan*, a drug was purchased by the Drug Inspector for the purpose of sampling it under the provisions of the Act. When the sample was tested by the Government Analyst, he reported that the drug was 'misbranded, adulterated and spurious'. Section 27 of the Act renders a person who manufactures for sale or for distribution, or who sells or stocks or offers for sale any adulterated or spurious drug, liable to a punishment with imprisonment for a term which shall not be less than one year though a maximum is provided.

The appellants contended that there was non-compliance with the provision contained in Section 23(4)(iii) of the Act since the Inspector did not deliver one portion of the sample to the appellants. Section 23 empowers an Inspector to take sample of any drug for the purpose of test or analysis but prescribes a procedure to be followed. Non-supply of one portion of the sample to the appellant has resulted in depriving him of a valuable right to test the correctness of the report of the Government Analyst. Rejecting the contention, the Court held that the appellant could have availed himself of the remedy indicated in Section 23(4) itself by requesting the Court to send the other portion of the sample remaining in the Court to be tested at the Central Drugs Laboratory. The Court observed:

> When the provisions can be interpreted in such a way, it is not congenial to the interest of criminal justice to acquit the manufacturers of forbidden medicines or drugs on a technical ground that there is a lacuna in the legislation by not supplying copy of the report of the Government Analyst to the manufacturer in certain situations. To adopt the course of acquitting such offending manufacturers only on the legislative lacuna (if at all it is lacuna) would be hazardous to public health.

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88. AIR 2001 SC 1303.
and the lives of the patients to whom drugs are prescribed by medical practitioners would be in jeopardy.\(^8^9\)

In *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.\(^9^0\)*, the apex Court was to decide as to how far the similarity in trade marks between two medicinal products e.g. ‘Flacitab’ and ‘Falcigo’, could lead to deception or causing confusion among consumers. The Government referred to different judgments in which two similar marks like ‘Glucovita’ and ‘Gluvita’, ‘Amritdhara’ and ‘Lakshmandhara’, ‘Erectiks’, and ‘Erector’, ‘Navaratna’ and ‘Navaratra Kalpa’, ‘Protovit’ and ‘Dropovit’ etc. raised confusion. The Court observed:

While confusion in the case of non-medicinal products may only cause economic loss to the plaintiff, confusion between the two medicinal products may have disastrous effect on health and in some cases life itself. Stringent measures should be adopted specially where medicines are the medicines of last resort, as any confusion in such medicines may be fatal or could have disastrous effects... Confusion between medicinal products may, therefore, be life threatening, not merely inconvenient.

The Court held that in case of medicinal products there can be no provisions for mistake since even a possibility of mistake may prove to be fatal. Therefore, strict measures to prevent any confusion arising from similarity of marks among medicines are required to be taken. The Court referred to Section 17B of the Act under which an imitation or resemblance of another drug in a manner likely to deceive is regarded as a spurious drug. That being so ‘it is but proper that before granting permission to manufacture a drug under a brand name the authority under the Act is satisfied that there will be no confusion or deception in the market’.

This decision of the Supreme Court is important because the incorrect intake of medicine may even result in loss of life or other serious health problems.

\(^8^9\) *Id.* at 1309.

\(^9^0\) AIR 2001 SC 1952.
Article 21 of the Constitution guarantees right to life and the apex Court has interpreted the guarantee to cover a life with normal amenities ensuring good living which include medical attention, life free from diseases and longevity. On account of both want of appropriate enforcement of the law as also strict measures necessary to eradicate the existing evils, the fundamental right to life is not available to the citizens of the country. Moreover, Article 47 lays down the improvement of public health and prohibition of drugs injurious to health as one of the primary duties of the State. These are indispensable to the very physical existence of the community. The health care of citizens is a problem with various facets. It involves an ever growing and changing challenge. Since the nature of problem is ever changing one and one can not have a fixed solution, the judicial process is not an appropriate forum for handling such matters. However, the Central Government, on the basis of expert advice, can indeed adopt an approved national policy and prescribe an adequate number of formulations which would on the whole meet the requirement of the people at large. State is, no doubt, anxious to improve the general condition and is willing to exercise adequate control. Parliament has also enhanced the penalties with a view to ensure elimination of injurious drugs and maintenance of the quality and standard of drug preparations. There is, however, no scope for complacency in this field and constant and regular attention has to be paid. A healthy body is the basic foundation for all human activities. In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health.91

91. See Vincent Panikurlangara v. Union of India, AIR 1987 SC 990.
6.10 The Factories Act, 1948

The Factories Act, 1948\(^{92}\) (hereinafter ‘the Act’) was enacted with the object of ensuring adequate safety measures\(^{93}\) and promoting the health\(^{94}\) and welfare\(^{95}\) of the workers employed in factories. To have maximum production and productivity, an appropriate work culture conducive to safety, health and happiness of workers needs to be ensured.

The Act is enforced by State Governments through their Factory Inspectorates. The Act also empowers the State Governments to frame rules so that the local conditions prevailing in the State are appropriately reflected in the enforcement. There are provisions for statutory health surveys and appointment of safety officers in large factories.

Substantial technological innovation in the industrial field and coming up of several chemical industries which deal with hazardous and toxic substances, have created problems of industrial safety. They have led to varied occupational health hazards. In view of these developments, the Act was amended by Act 20 of 1987 providing specifically for the safeguards to be adopted against the use and handling of hazardous substances and the laying down of emergency standards and measures. A new Chapter IVA was added in the Act dealing with ‘provisions relating to hazardous processes’.\(^{96}\) It includes

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93. Eye protection, control of explosive and inflammable dusts, etc.
94. Cleanliness, ventilation and temperature, dangerous dusts and fumes, lighting etc.
95. Washing facilities, first-aid, canteens, shelter rooms etc.
96. ‘Hazardous process’ means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would - (i) cause material impairment to the health of the persons engaged in or connected therewith, or (ii) result in the pollution of the general environment [Section 2(cb)].
procedures for siting of hazardous industries to ensure that hazardous and polluting industries are not set up in areas where they can cause adverse effects on the general public. Provision has also been made for the workers' participation in safety management.

The State Government has been empowered to frame rules for effective arrangements in every factory for the treatment of wastes and effluents resulting from manufacturing process, so as to render them innocuous, and for their disposal. In case of dust or fume or other impurity of such a nature, effective measures have to be taken to prevent its inhalation and accumulation. If the manufacturing process in any factory produces dust, gas, fume or vapour likely to explode on ignition, all practicable measures ought to be taken to prevent such explosion and if at all the plant or machinery could produce explosion, to restrict the spread and effects of the explosion. Where any part of the plant or machinery contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure, that part ought not to be opened except in accordance with the prescribed safety guidelines. Moreover, if any operation involves the application of heat, any explosive or inflammable substance has to be removed from the premises to prevent any risk of igniting the substance. Necessary measures have to be taken to prevent outbreak of fire and its spread.

Initial location or expansion of a factory involving hazardous process is to be determined on the recommendation of a Site Appraisal Committee appointed by the State Government under the Chairmanship of Chief Inspector of the

97. Section 12.
98. Section 14.
99. Section 37.
100. Section 38.
State. Disclosure of information by the occupier regarding dangers, including health hazards and the measures to overcome such hazards; health and safety of workers; wastes and the manner of their disposal; on-site emergency plan; and measures for the handling, use, transportation and storage of hazardous substances has been made compulsory. Accurate and up-to-date health and medical records of workers exposed to any chemical, toxic or other harmful substances have to be maintained. The Central Government is empowered to appoint an Inquiry Committee to inquire into the standards of health and safety and make recommendations. The maximum permissible limits of exposure to chemical and toxic substances have been laid down in the Second Schedule. There are provisions for workers’ participation in safety management and their right of being warned about imminent danger. The State Government has been empowered to make special rules in respect of dangerous operations.

Contravention of the provisions of Chapter IVA or the rules made thereunder, is punishable with imprisonment for a term which may extend to seven years and with fine which may extend to two lakh rupees, and in case the contravention continues, with additional fine which may extend to five thousand rupees for every day. If the failure or contravention continues beyond a period of one year after the date of conviction, the offender is punishable with imprisonment for a term which may extend to ten years. However, if the

101. See Section 41A.
102. Section 41B.
103. Section 41C.
104. Section 41F.
105. Section 41G.
106. Section 41H.
107. Section 87.
108. Section 96A.
occupier or manager of a factory is charged with an offence under the Act, he is entitled to prove to the satisfaction of the Court that he exercised due diligence and some other person committed the offence in question without his knowledge, consent or connivance. In such a situation, 'that other person' is convicted of the offence provided there is examination on oath, cross-examination and the actual offender is produced before the Court within three months from the date of charge.\footnote{Previous sanction in writing of an Inspector is necessary for taking cognizance of any offence and no Court below the rank of a Magistrate of the first class shall be competent to try the case under the Act.\footnote{There is a right of appeal to the appellate authority.}} Therefore, the Act, as amended in 1987, contains significant provisions in relation to factories engaged in hazardous processes\footnote{For a list of industries involving hazardous processes, see First Schedule to the Act.} regarding the use and handling of hazardous substances, the siting of such industries, safeguards to be adopted, power of the State Government to make rules in this behalf and the appointment of a Site Appraisal Committee under the Chairmanship of the Chief Inspector of the State. These provisions are aimed at ensuring not only the safety and health of workers engaged in hazardous processes but also the people living in the vicinity as well as protection of the general environment. However, the provisions contained therein have been criticised on the following grounds:\footnote{See N.S. Chandrasekharan, \textit{Hazardous Processes and Substances: Legal Control}, C.U.L.R., 74-81 (1995).}
1. The State Government has been authorised to frame rules requiring submission of plans of factories, obtaining previous permission for the site on which the factory is to be situated, construction and extension of the factory and registration and licensing of factories. However, these provisions do not contain any guidelines on the matters to be taken into account for deciding whether the permission applied for is to be granted or not.

2. The Site Appraisal Committee has only an advisory role. It makes recommendations to the State Government. In view of the priorities of the State to achieve the goal of economic development through industrialisation, one can not rule out the possibility of the State not paying adequate attention to the risk factors in location of industries. The consequences may be disastrous. An analysis of the provisions of the Act reveals that the control mechanism envisaged therein is inadequate.

3. Even the appointment of Site Appraisal Committee is not mandatory. The provision contained in Section 41A(1) in this regard is only enabling in nature i.e. ‘the State Government may, for purposes of advising it... appoint a Site Appraisal Committee’. The recommendations of the Committee are not binding on the State. In fact, the very structure of the Committee is defective. Instead of a Committee which can act independently and effectively to protect the environment, what one sees is a Committee designed to protect the interest of the Government. It is the Government which appoints the Chairman and members of the Committee. They are to be appointed from departments of the Government and from agencies dominated by Government. The power to co-opt the members has been conferred on the Government. The Committee, obviously, requires a change in its
structure, procedure and powers Its decisions should be made binding on the authorities concerned The Act, therefore, requires amendment There is need to make the Committee a strong and effective instrument of controlling hazardous substances and processes

4 The Act does not provide for mandatory environmental impact assessment The procedure for sanctioning location of the factory lacks openness and there is no involvement of the public in the process There is no provision for taking into account the objections from general public before siting the factory The procedure should include open environmental impact assessment with public participation

5 The main thrust of the provisions casting a general duty of care on the occupier of the factory and on persons dealing in articles to be used in factory, is on the protection of workers and not on protection of the public in general from unsafe and polluted environment

6 There are provisions for furnishing of information to the people so that they can know about the risks and dangers involved in factories engaged in hazardous processes and can adopt safety measures in case of an emergency These are welcome provisions However, these provisions have their emphasis on the remedial measures rather than preventive ones

6.11 The Industries (Development and Regulation) Act, 1951

The Industries (Development and Regulation) Act, 1951113 (hereinafter ‘the Act’) was enacted with the object of bringing the development and regulation

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of a number of important industries under the control of Central Government. The activities of these industries affect the country as a whole and their development must be governed by economic factors of all-India import. The Act confers wide powers on the Central Government in respect of licensing of new undertakings, making rules for the registration of existing undertakings, regulating the production and development of Scheduled industries and consulting the Provincial Governments on these matters. The Act provides for the constitution of a Central Advisory Council, prior consultation with which is obligatory before the Central Government takes certain measures such as the revocation of a licence or taking over the control and management of any industrial concern. Development Councils have also to be constituted for the purpose of performing such functions which may increase the efficiency and productivity of the Scheduled industries.

Contravention of the provisions dealing with registration or licensing conditions, or any direction issued or order made or rules promulgated, is punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both and in case the contravention continues, with an additional fine which may extend to five hundred rupees for every day. Making any false statement or furnishing any false information is made punishable with imprisonment which may extend to three months or with fine which may extend to two thousand rupees, or

114. Section 5.
115. Section 6.
116. Section 24.
both. No Court below the rank of a Judicial Magistrate of the first class is competent to try the offence under the Act.

The First Schedule to the Act lists 38 industries, the control of which by the Central Government has been considered to be expedient in public interest. These industries include metallurgical industries, fuels, boilers and steam, fertilizers, chemicals (other than fertilizers), dye-stuffs, drugs and pharmaceuticals, textiles, paper and pulp including paper products, food processing industries, cosmetics and rubber goods etc. The proper development of these industries is important for the economic development of the country. If the investigation reveals that any of the Scheduled industry has to close down due to serious difficulties, for example, in production and employment, or is being managed in a manner highly detrimental to the Scheduled industry or public interest, the Central Government has been empowered to take action for its rehabilitation including the power to take over its management. During the period of take over, the Government may invest public funds in such undertaking so as to ensure continued efficient management of the undertaking at the end of the period of take over. In addition, the Government may resort to the further course of action i.e. the sale of the undertaking at a reserve or higher price or reconstruction of the company. Thus, the provisions of the Act are significant for the proper development of Scheduled industries which contribute substantially to the Gross National Product of the country and provide employment to millions of people.

117. Section 24A.
118. Section 29.
6.12 The Mines Act, 1952

The Mines Act, 1952\(^{119}\) (hereinafter ‘the Act’) was passed with a view to amending and consolidating the law relating to the regulation of labour and safety in mines. It basically regulates the working conditions in mines. Provisions relating to health, safety and comfort of workers are largely on the lines of those contained in the Factories Act, 1948. Significant provisions relate to arrangements for drinking water, latrines, urinals etc.; grant of holidays with pay; rates of payment; prohibition on the presence of children below 18 years in mines; prohibition on employment of women between hours of 10 p.m. and 5 a.m.; enquiry regarding causes of notified diseases; first-aid appliances; appointment of inspectors and certifying surgeons; occupational health surveys; constitution of committees; and duties of owners and managers of mines. The Central Government has power to make regulations and rules under the Act.\(^{120}\)

Contravention of the provisions may invite punishment of imprisonment or fine or both. Different scales of punishment have been provided for different violations. Maximum imprisonment may extend to two years and fine to five thousand rupees. There is a provision for enhanced penalty for subsequent offence. Prosecution should be instituted at the instance of the Chief Inspector or District Magistrate or an Inspector authorised in this behalf. The owner, agent or manager of a mine may plead that he exercised due diligence and some other person committed the offence in question without his knowledge, consent or connivance. In such a situation, that other person shall be liable

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\(^{120}\) See Mines Rules, 1955.
provided he is produced within three months from the date appointed for the
hearing of the case and the case is proved against him. No Court below the
rank of a Metropolitan Magistrate or a Judicial Magistrate of the first class
shall be competent to try the offence under the Act.

'Mine' means any excavation for the purpose of searching or obtaining minerals
and includes a number of activities in this regard.121 Since negligence and
recklessness in carrying on these activities may assume dangerous proportions,
the Chief Inspector and Inspectors appointed under the Act have to ensure that
the provisions of the Act and regulations, rules, bye-laws and orders made
thereunder are strictly observed by every owner, agent or manager of a mine.
Where due to any matter, thing or practice within the mine, there is a danger to
the life or safety of any person employed, the Chief Inspector or an Inspector
may, by notice require the same to be remedied and in case of an urgent or
immediate danger, by order prohibit the employment in or about the mine or
any part thereof. There are provisions for the notice of accidents to be given to
the concerned authority by the owner, agent or manager, inquiry into the
causes of accidents, notice of certain diseases and investigation into the causes
of disease.

6.13 The Inflammable Substances Act, 1952

The Inflammable Substances Act, 1952122 (hereinafter 'the Act') was passed
with the object of declaring certain substances to be dangerously inflammable
and providing for the regulation of their import, transport, storage and

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121. See Section 2(j).
production by applying thereto the Petroleum Act, 1934 and the rules made thereunder. Acetone, calcium phosphate, carbide of calcium, cinematograph films having nitro-cellulose base, ethyl alcohol, methyl alcohol and wood naphtha have been specifically declared to be dangerously inflammable. 123

6.14 The Prevention of Food Adulteration Act, 1954

Food is the basic necessity to sustain life and pure, fresh and healthy food is necessary for the health of the people. The widespread adulteration of foodstuffs in India by flavouring and colouring matters; heavy metals; coiling materials and preservatives; mixing of inferior or cheaper substances and any poisonous or deleterious substances resulted in the enactment of the Prevention of Food Adulteration Act, 1954 124 (hereinafter ‘the Act’) by the Government of India to give relief to the consumers. Prior to the enactment of this central legislation on the subject, different laws existed in different States in India for the prevention of adulteration of food-stuffs, but they lacked uniformity. In 1937, a Committee appointed by the Central Advisory Board of Health recommended for the adoption of an all India legislation on the subject. ‘Adulteration of food-stuffs and other goods’ was included in the Concurrent List as item no. 18 of List III of the 7th Schedule to the Constitution and the Central Government enacted the legislation which has replaced all local food adulteration laws. The purpose of the Act is ‘to make provision for the prevention of adulteration of food’. 125

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123. Section 3.
125. The Preamble.
The definition of an 'adulterated' article of food includes, among others, the following:\footnote{126 See Section 2(a)}

i. if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health,

ii. if the article consists wholly or in part any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insectinfested or is otherwise unfit for human consumption,

iii. if the article contains any poisonous or other ingredient which renders it injurious to health,

iv. if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health,

v. if any colouring matter other than that prescribed in respect thereof is present in the article or if the amount of colouring matter is not within the prescribed limits of variability, or

vi. if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits

An article of food is deemed to be 'misbranded' if it is so coloured, flavoured or coated, powdered or polished that the fact of the article being damaged is concealed or if the article is made to appear better or of greater value than it really is,\footnote{127 Section 2(ix)(d)} or if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in
contravention of the requirements of the Act or rules made thereunder. The word 'unwholesome' and 'noxious' when used in relation to an article of food mean respectively that the article is harmful to health or repugnant to human use.

There are provisions for the constitution of a Central Committee for Food Standards to advise the Central Government and the State Governments on matters relating to administration of the Act, appointment of a Secretary and other staff to the Committee, establishment of one or more Central Food Laboratory or Laboratories for analysis or tests of the samples of articles of food, appointment of public analysts and food inspectors. The powers of food inspectors have been specified and the procedure to be followed by food inspectors while taking a sample of food for analysis has been provided.

The Act also authorises a purchaser or a recognised consumer association to have an article of food analysed by the public analyst on payment of such fees as may be prescribed. Moreover, the Central or State Government may, by notification in the Official Gazette, require medical practitioners to report all cases of food poisoning coming within their cognizance, to such officer as may be specified.

Different scales of punishment have been provided for different contraventions including mandatory minimum imprisonment and fine. The maximum

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128. Section 2(ix)(j).
129. Section 2(xv).
130. Section 3.
131. Section 3A.
132. Section 4.
133. Section 8.
134. Section 9.
135. Section 10.
136. Section 11.
137. Section 12.
138. Section 15.
punishment is imprisonment for a term which shall not be less than three years but which may extend to term of life and fine which shall not be less than five thousand rupees in case an article of food or adulterant is such that when consumed by any person is likely to cause his death or grievous hurt. Subsequent conviction may result in the cancellation of licence and publication of offender's name, address, the offence and penalty imposed in such newspaper as the Court may direct. The Court has power to try cases under the Act summarily provided the sentence of imprisonment imposed does not exceed one year.

The penal provisions apply to companies also and any person in charge of and responsible to the company for the conduct of its business shall be deemed to be guilty of the offence and liable to punishment provided he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence. No prosecution for an offence under the Act can be instituted except with the written consent of the Central Government or the State Government and no Court below the rank of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall be competent to try any offence under the Act. The Central Government has power to give directions and make rules for the purpose of carrying out the provisions of the Act. In respect of the matters not falling within the

139. Section 16.
140. Section 16A.
141. Section 17.
142. Section 20.
143. Section 22A.
puviev of rule making power of the Central Government, the State Government has been empowered to make rules 145

In *Jai Narain v The Municipal Corporation of Delhi*, 146 the Court held that a preparation in which a non-permissible colouring matter has been used is an adulterated food, the sale of which is prohibited by Section 7. Section 16 provides for a minimum sentence of imprisonment for not less than six months *inter alia* for the offence of selling adulterated food. The policy of Section 16, therefore, is clearly to impose a sentence not less than that provided therein.

Fact that Sections 7 and 16 of the Act, read together, impose inflexible minimum sentence of six months' rigorous imprisonment on offenders guilty of sale of adulterated food does not by itself render those provisions unconstitutional 147 In the words of Krishna Iyer, J

Let us be clear about the basics. Policy is for Parliament, constitutionality for the Court. Protection of public health and regulation of noxious trade belong to the police power of the State and legislation like the Prevention of Food Adulteration Act is of that genre 148

In *Municipal Corporation of Delhi v Mohd Kareem*, 149 the Court held that the Act makes a distinction between adulteration of food and misbranding of food. Although both offences are dealt with under the same provision of law, namely, Section 7/16, they constitute different offences requiring proof of different facts.

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145 Section 24
146 AIR 1972 SC 2607
147 *Indexjet v State of U P*, AIR 1979 SC 1867
148 *Id* at 1868
149 1974 Cri L J 572 (Delhi)
In *State of U.P. v. Hanif*[^150^] the Court held that it is open to the State Government to appoint more than one Public Analyst to any local area or areas and both would co-exist to have power and jurisdiction to analyse an article or articles of food covered under the Act to find whether the same is adulterated. The Court further observed that it is not the law that the evidence of Food Inspector must necessarily need corroboration from independent witnesses. The evidence of the Food Inspector is not inherently suspected, nor be rejected on that ground. He discharges the public function in purchasing an article of food for analysis and if the article of food so purchased in the manner prescribed under the Act is found adulterated, he is required to take action as per law. He discharges public duty.

As regards offences by companies, the apex Court in *R. Banerjee v. H D. Dubey*[^151^] held:

It is crystal clear from the scheme of Section 17 that where a company has committed an offence under the Act, the person nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of its business shall be proceeded against unless it is shown that the offence was committed with the consent / connivance / negligence of any other Director, Manager, Secretary or Officer of the company in which case the said person can also be proceeded against and punished for the commission of the said offence. It is only where no person has been nominated under sub-section (2) of Section 17 that every person, who at the time of the commission of the offence was in charge of and was responsible to the company for the conduct of its business can be proceeded against and punished under the law.

The evil of food adulteration has become so widespread and persistent in our society that a concerted and determined effort is needed to curb this anti-social

[^151^] AIR 1992 SC 1168
evil The Act has been enacted to provide an all-India legislation on the subject and to cope up with the increasing tendencies to indulge in adulteration. Deterrent punishments have been provided for those who are involved in the supply of sub-standard or adulterated food containing harmful poisonous substances which constitute a serious threat to the health of the general public. The Act is basically a consumer protection legislation which is designed to prevent adulteration of food-stuffs. Keeping in view the gravity of the problem and the danger it poses to the health of the nation, the provisions of the Act and the rules made thereunder require strict implementation. In Municipal Corporation of Delhi v Sunja Ram, the Court observed that the officers enforcing anti-food adulteration measures should realise that on their discharge of the solemn duty imposed on them by the statute, depends the health of the entire nation, and any lapse in vigilance on their part or in conscientious discharge of their duty is likely to affect the health of the whole society including their own children.

6.15 The Mines and Minerals (Regulation and Development) Act, 1957

The Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter 'the Act'), which replaces the Act of 1948, provides for the development and regulation of mines and minerals under the control of the Central Government. The activities are to be carried on in accordance with the terms and conditions of a prospecting licence, as the case may be, a

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152 1965(2) Cri L J 571
154 The Mines and Minerals (Regulation and Development) Act, 1948 (53 of 1948)
155 'Minerals' includes all minerals except mineral oils [Section 3(a)]
156 'Prospecting licence' means a licence granted for the purpose of undertaking prospecting operations [Section 3(g)]
mining lease,\textsuperscript{157} granted under the Act and the rules made thereunder. Specific reference to environment and pollution has been made. Prospecting licences or mining leases may be terminated by the Central Government, after consultation with the State Government, if it is expedient in the interest of, among others, preservation of natural environment and prevention of pollution.\textsuperscript{158}

The Central Government has power to make rules in respect of several matters including the manner in which rehabilitation of flora and other vegetation such as trees, shrubs and the like destroyed by reason of any prospecting or mining operations shall be made.\textsuperscript{159} In respect of minor minerals,\textsuperscript{160} the State Government has a similar power.\textsuperscript{161} The Central Government is under a duty to take all necessary steps for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations. For the performance of this duty, it may make rules including rules for the disposal or discharge of waste slime or tailings arising from any mining or metallurgical operations carried out in a mine.\textsuperscript{162}

Violation of terms and conditions of a reconnaissance permit\textsuperscript{163} or prospecting licence or a mining lease has been made punishable with imprisonment for a

\textsuperscript{157} 'Mining lease' means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose. [Section 3(c)].

\textsuperscript{158} Section 4A.

\textsuperscript{159} Section 13(qq).

\textsuperscript{160} 'Minor minerals' means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral. [Section 3(e)].

\textsuperscript{161} Section 15(i).


\textsuperscript{163} 'Reconnaissance permit' means a permit granted for the purpose of undertaking reconnaissance operations'. [Section 3(h-b)]. And 'reconnaissance operations' means any operations undertaken for preliminary prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping, but does not include pitting, trenching, drilling (except drilling of boreholes on a grid specified from time to time by the Central Government) or sub-surface excavation. [Section 3(h-a)].
term which may extend to two years or with fine which may extend to twenty five thousand rupees or both.\textsuperscript{164} Contravention of other provisions of the Act is punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or both and in case, the contravention continues, with an additional fine which may extend to five hundred rupees for every day.\textsuperscript{165} Any officer authorised by the Government has power to enter, search and inspect any mine or stock of minerals lying at any mine and relevant documents. The Central Government has power to revise any order made by the State Government or other authority under the Act.\textsuperscript{166}

In \textit{Tarun Bharat Sangh v. Union of India},\textsuperscript{167} Tarun Bharat Sangh, a voluntary organisation, approached the Government complaining that widespread illegal mining activity was going on in the area declared as ‘tiger reserve’ in Alwar district of Rajasthan. In the interest of ecology, environment and rule of law, it said, the activity should stop. The Court, after thorough interpretation of the enacted laws, came to the conclusion that the State Government is empowered not only to declare any forest land as a protected forest but also any waste land as such not only to protect the existing forest but also to bring waste lands under schemes of afforestation. Once declared as protected forest, the distinction between forest land and waste land disappears. In the said area, no non-forest activity can be carried on without the prior approval of the Central Government. The mining activity is certainly a non-forest activity and no mining operation of whatever nature can be carried on in the protected area.

\textsuperscript{164} Section 21(1).
\textsuperscript{165} Section 21(2).
\textsuperscript{166} Section 30.
\textsuperscript{167} 1993 Supp (3) SCC 115.
The grant of mining leases / licences and then renewal by the State Government, without obtaining the prior approval of the Central Government, is contrary to law. The Court, therefore, held that mining activity in the area should stop forthwith. May be that this will have the effect of bringing to halt the activity involving a good amount of capital and a large number of workers.

In *Tata Iron & Steel Co. Ltd. v. Union of India*, the apex Court observed that from the scheme of the Act it is clear that the Central Government is vested with the discretion to determine the policy regarding the grant or renewal of leases. Since these issues involve considerably high stakes, both in terms of commercial value and concept of mineral development and the consequent national interest, those likely to be affected and those who can legitimately have a stake in the proper formulation of such a vital policy, can be heard. While the Central Government exercises its discretion, the capacity of an industry to effectively exploit the ore, will be a predominant consideration.

If on an application made by the petitioner for renewal of his lease, the State Government refuses to renew the same, the petitioner is entitled to file a revision application to the Central Government for revision of the order. Such an application has to be made within the prescribed time and accompanied by prescribed fee. However, revision in renewal cases should not be rejected on the ground of delay, unless special reasons for not condoning delay exist. Unless there are special reasons, delay should be condoned.

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168 AIR 1996 SC 2462, See also *Indian Metals & Ferro Alloys Ltd. v. Union of India*, AIR 1991 SC 818

The royalty to be paid in respect of mining lease is fixed under the Act of 1957 which happens to be a Central legislation and provides for the regulation of mines and development of minerals under the control of the Union. On a plain reading of the language of the statute (Section 2) and upon a declaration as to expediency of Union control under Section 2, the Central Government alone has the power to legislate in regard to regulation of mines and mineral development. On reference to Section 9 which provides for royalties in respect of mining lease the field being occupied, question of empowerment of the State Government to collect royalty does not arise. Section 9 of the Act of 1957 is within the legislative competence of Parliament both under Entry 54 and Entry 97 of the Union List.\(^{170}\)

The mining process is a potential source of release of heavy metals or pollutants into the environment. Rain or flood-waters can quickly carry contaminant-laden tailings from mining operations into lakes or other water ways. Because these contaminants are heavy and persistent, they often collect in sediments at the bottom of waterways. They can pose a risk to fish and birds that feed in contaminated areas, as well as to drinking water supplies. No doubt, mineral extraction is an important commercial activity but it carries with it the problem of mining and quarrying waste. The activities of mineral extraction, mining and quarrying and the production of waste from these activities have severe environmental consequences. The Act specifically addresses the issues of preservation of environment, prevention of pollution,

rehabilitation of degraded environment and disposal of waste resulting from prospecting or mining operations.

6.16 The Offshore Areas Mineral (Development and Regulation) Act, 2002

For the development and regulation of mineral resources in the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India, the Parliament has enacted the Offshore Areas Mineral (Development and Regulation) Act, 2002. By this legislation, the regulation of mines and the development of minerals in offshore areas have been brought under the control of the Union. Any reconnaissance operation, exploration operation or production operation in the offshore areas can not be carried on except in accordance with the prescribed terms and conditions of a permit, licence or lease granted under the Act and the rules made thereunder. The Central Government may take certain measures for prevention and control of pollution and protection of marine environment due to the activities in the offshore areas and the permittee, licensee or lessee has to comply with the directions of the Central Government or the administering authority in this regard.

Contravention of the provisions of the Act or rules made thereunder may invite penal as well as civil liability. Penal liability may extend to imprisonment for a term of five years and fine upto one crore rupees. The civil liability for contravention of general terms and conditions includes a mandatory minimum

172. Section 5.
173. See Sections 20 & 21.
174. Section 23.
amount of not less than five lakh rupees and which may extend to one crore rupees to be paid to the Central Government. For contravention of particular terms and conditions, an additional amount of not less than one lakh rupees and which may extend to ten lakh rupees has to be paid.\(^{175}\) Thus, the provisions of the Act providing for deterrent punishment and fine are of special significance so far as the safety and health of persons, prevention and control of pollution and protection of marine environment due to activities in the offshore areas are concerned.

6.17 Code of Criminal Procedure, 1973

The provisions of the Code of Criminal Procedure, 1973\(^{176}\) (hereinafter to be referred as ‘Cr.P.C.’ or the ‘Code’) can be invoked to control environmental pollution through different activities and substances resulting in public nuisance. Chapter X, Part B\(^{177}\) and Part C\(^{178}\) provide an independent, speedy and summary remedy against public nuisance. Chapter X, Part B provides the procedure for the abatement of nuisance in ordinary cases and part C in urgent cases of nuisance.

Section 133 Cr. P. C.\(^{179}\) empowers an Executive Magistrate to pass a conditional order for the removal of public nuisance within a fixed period of

\(^{175}\) Section 28.
\(^{176}\) Act No. 2 of 1974.
\(^{177}\) Sections 133-143.
\(^{178}\) Section 144.
\(^{179}\) Section 133 reads:

1. Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government on receiving the report of a Police Officer or other information and on taking such evidence (if any) as he thinks fit, considers--

a. that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

b. that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or
time. He may act on the report of a Police Officer or other information and on taking such evidence (if any) as he thinks fit. The order may require the person causing nuisance, to appear before the Executive Magistrate at a time and place to be fixed by the order and show cause why the order should not be made absolute.

The order duly made by a Magistrate under Section 133, Cr P C may not be called in question in any Civil Court.

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180 Section 133(2)
The person against whom such order is issued has to perform the act as directed in the order or appear in accordance with such order and show cause against the same.\textsuperscript{181} If such person does not perform such act or appear and show cause, he is liable to the penalty prescribed in that behalf in Section 188 of the Indian Penal Code, 1860 and the order shall be made absolute.\textsuperscript{182}

If the person against whom an order under Section 133, Cr.P.C. is made, appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons case. If the Magistrate is satisfied that the order is reasonable and proper, the order shall be made absolute.\textsuperscript{183}

When an order has been made absolute, the Magistrate should, through notice, further require the person against whom the order was issued, to perform the act as directed. The Magistrate should also inform him that in case of disobedience, he would be liable to the penalty provided by Section 188 of Indian Penal Code. Even thereafter, if such act is not performed within the time fixed, the Magistrate may cause it to be performed and may recover the costs.

\textsuperscript{181} Section 135.
\textsuperscript{182} Section 136. Section 188, I.P.C. 1860 reads -- "Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation -- It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

\textsuperscript{183} Section 138.
of performing it by the attachment and sale of his movable or immovable property.\textsuperscript{184}

Repetition or continuance of a public nuisance, after injunction to discontinue, is punishable with simple imprisonment for a term which may extend to six months, or with fine, or with both.\textsuperscript{185}

An analysis of the above stated provisions makes it clear that the Executive Magistrate, after necessary enquiry, has the power to direct the person causing a public nuisance to remove the same and in the event of his failure to do so, the Magistrate has the power to have the same removed at the cost to be recovered from the defaulter and also to pass orders preventing repetition or continuance of the public nuisance. However, it should be borne in mind that Chapter X of the Code of Criminal Procedure deals with 'public nuisances' and not with private nuisances. The remedy for the latter is a civil suit, although what constitutes nuisance may be common to both classes. Paragraph 3 of Section 133, Cr. P.C. uses the word 'community' deliberately and that word has a definite meaning. It means the public at large or the residents of an entire locality. Section 133, Cr. P.C. provides a speedy and summary remedy in case of urgency where danger to public interest or public health is concerned. In all other cases, the party should be referred to the remedy under the ordinary law.\textsuperscript{186}

The validity of the above stated provisions has been upheld by the apex Court in \textit{Govind Singh v. Shanti Sarup}.\textsuperscript{187} The Supreme Court, in this case,

\begin{itemize}
\item \textsuperscript{184} Section 141.
\item \textsuperscript{185} Section 291, I.P.C.
\item \textsuperscript{186} \textit{Shaukat Hussain v. Sheo dayal Saksaina}, AIR 1958 M.P. 350.
\item \textsuperscript{187} AIR 1979 SC 143.
\end{itemize}
recognised Section 133, Cr P C as an effective instrument in dealing with environmental pollution. The Court upheld the view taken by Sub-Divisional Magistrate that smoke emitted by the chimney of an oven constructed by a baker, is injurious to the health and physical comfort of the people living or working in the proximity of the bakery. The Court directed the baker to demolish the oven and chimney within a month and held that where health, safety and convenience of the public at large are involved, the safer course would be to accept the view of the Magistrate who himself had seen the hazard.

A similar view was taken by the apex court in Municipal Council, Ratlam v Vardhuchand. In this case, the Court compelled Ratlam Municipality to provide proper sanitation and drainage so that poor may live with dignity.

The facts of the case were that the residents of New Road locality in Ratlam town alleged that since long they were suffering due to the mismanagement caused by Ratlam Municipality which resulted in the existence of open drains, pits and public excretion by humans for want of lavatories. In this locality, many prosperous and educated persons were living on the roadside. A large area of this locality had slums with no toilet facility and consequently people living in these slums defecated on the bank of drains or on the adjacent land. This created heavy pollution which intern became breeding ground for mosquitoes. Due to bad drainage system, water accumulated on the main road and during rainy season, this dirty water passed through living houses. Moreover, a dirty nallah was flowing in the locality. There was an alcohol plant in that locality and from this plant, waste effluents were discharged in the nallah.

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188 AIR 1980 SC 1622 (1980) 4 SCC 162
having chemicals with foul smell. Due to these unhygienic conditions, public health and safety was endangered.

The residents of the locality moved the Magistrate under Section 133 Cr.P.C. The Magistrate gave directions to the Municipality to draft a plan within six months for removing the nuisance. In appeal, the Sessions Court reversed the order of Magistrate but on an appeal to the High Court, the order of Magistrate was approved. On a further appeal to the Supreme Court, Krishna Iyer, J. delivered the judgment and affirmed the order of the Magistrate.

The basic question before the Supreme Court was whether by affirmative action, a court can compel a statutory body to carry out its duty to community by constructing sanitation facilities at great cost and on a time bound basis?

The Court held that it was the duty of the Municipality to clean public streets, places and sewers and in this case it was established beyond doubt that Municipality had acted in gross negligent manner and committed breach of its duties. The Court reminded the Municipality of its duties towards people in the following words:

A responsible municipality constituted for the precise purpose of preserving public health and providing better conveniences can not run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are the first charge on local self government bodies.

The Supreme Court issued following directions for execution by Ratlam Municipality:


1. The Municipal Council must provide proper drainage system within one year, for which the work must start within two months. The Magistrate should inspect its progress every three months.

2. The Municipal Council must take action to stop effluents from the Alcohol Plant flowing into the street. The State Government should also take steps to stop pollution.

3. The Municipal Council must construct, within six months, sufficient number of public latrines for use by men and women separately, provide for water supply and scavenging service morning to evening to ensure sanitation. The health officer of the Municipality would furnish a report, at the end of six months that the work has been completed.

4. State Government should give special instruction to Malaria Eradication Wing to stop mosquito breeding in Ward No. 12.

5. Municipal Council must fill up cesspools and other pits of filth.

6. If these directions are not complied with, the Sub-Divisional Magistrate would prosecute officers responsible and the Supreme Court would also consider action to punish for contempt.

Therefore, the object of Chapter X is to enable the Magistrate to make speedy orders and deal speedily with cases where a public nuisance has been committed. The provisions are intended to create facilities for conditional orders to become final without needless delay and thereby to promptly ensure public safety and convenience. However, these provisions should not be used to settle disputes between private individuals and the health, safety or physical comfort of the community as a whole should be taken into account.
6.18 The Motor Vehicles Act, 1988

The Motor Vehicles Act, 1988\(^{189}\) (hereinafter ‘the MV Act’ or ‘the Act’) which replaces the earlier Act of 1939, was passed with the object of consolidating and amending the law relating to motor vehicles. Vehicular emissions are responsible for about 65-70 percent of total air pollution in India, which in turn results in the premature death of about 7,50,000 people annually\(^{190}\). The Act controls air pollution by providing standards for vehicular emissions. Both Central and State Governments have power to make rules as to the specified matters. The Central Government may make rules to regulate the construction, equipment and maintenance of motor vehicles including the rules relating to the emission of smoke, visible vapour, sparks, ashes, grit or oil, the reduction of noise emitted by or caused by vehicles, transportation of goods of dangerous or hazardous nature to human life, and standards for emission of air pollutants\(^{191}\). Significant provisions have been made with respect to licensing and registration procedures, control of transport vehicles, control of traffic, requirement of insurance policies, limits of liability and Claims Tribunal.

In 1989, the Central Motor Vehicles Rules were notified which incorporated nation-wide emission standards for both petrol and diesel engine vehicles. Rule 115 lays down emission standards of smoke, vapour etc. from motor vehicles and Rule 116, which was introduced in the year 1993, provides for the test for smoke emission level and Carbon Monoxide level for vehicles. These rules authorise the regional or state transport authorities to allow private agencies such as petrol stations to test the emission levels of vehicles and issue


\(^{191}\) Section 110.
‘pollution under control’ certificates. Violation of emission standards results in the suspension of vehicle’s registration until a fresh certificate is obtained.

The Act also imposes penal liability for violation of prescribed standards in relation to road safety and control of noise and air pollution. Any person violating the prescribed standards shall be punishable for the first offence with a fine of one thousand rupees and for any second or subsequent offence with a fine of two thousand rupees. Violation of the provisions or rules relating to the carriage of goods which are of dangerous or hazardous nature to human life, has been made punishable with imprisonment for a term which may extend to one year or with fine which may extend to three thousand rupees or with both. Penalty for second or subsequent offence is imprisonment for a term which may extend to three years or fine which may extend to five thousand rupees or both. 192

In *State v. R.P. Sharma*, 193 the vehicle (Maruti Van) driven by the respondent was found emitting excessive smoke density in violation of Rule 115 of the Central Motor Vehicles Rules, 1989 (hereinafter the ‘CMV Rules’). On being summoned, the respondent pleaded not guilty and claimed trial. On checking for pollution, the vehicle driven by the accused was found to be emitting smoke density of Carbon Monoxide 5.7% which was far in excess to the standard prescribed in sub-rule (2) of Rule 115 according to which it should not exceed 3% by volume.

The learned Metropolitan Magistrate, however, acquitted the accused purely on the basis of a construction of Rules 115 and 116 of CMV Rules. He

192. Section 190(2) & (3).
observed that the inspectors of the State Transport Authority can not challan the motorists for violation of the provisions of sub-rule (7) of Rule 115 without following the procedure laid down under Rule 116. It was held that Rule 116 has an overriding effect and in every case where Rule 115 is to be invoked the inspectors must first follow the procedure prescribed under Rule 116. They can not challan anybody directly under Rule 115 read with Section 190 of the MV Act without following the procedure laid down in Rule 116.

On an appeal to the High Court, the judgment passed by the Magistrate was set aside. The Court held:

We are unable to subscribe to the view taken by the learned Metropolitan Magistrate regarding the said Rules. In our opinion Rules 115 and 116 are independent of each other and for booking somebody under Rule 115 it is not mandatory to follow the procedure prescribed under Rule 116. Sub-rule (2) of Rule 115 prescribes the smoke emission standards for the various types of vehicles which use the roads while sub-rule (7) makes it compulsory for every vehicle to carry a valid 'pollution under control' certificate issued by an agency authorised for this purpose by the State Government. Thus any vehicle which violates the smoke emission standards prescribed under sub-rule (2) commits an offence and attracts the provisions of Section 190(2) of the Motor Vehicles Act. Similarly a vehicle which is required to carry a 'pollution under control' certificate as per sub-rule (7), must carry such a certificate at all times and such certificate should be produced on demand by the concerned officer. Not carrying a certificate by itself is an offence for which one can be booked and punished under Section 190(2) of the MV Act. Nothing else is relevant or required.  

The Court, therefore, observed that sub-rule (2) and sub-rule (7) of Rule 115 lay down statutory requirements which are independently punishable in the event of violation. They hold the field on their own force. They are not dependent on Rule 116. Rule 116 which was introduced in March, 1993 seeks

194.  *Id.* at 1259.
to create additional safeguards in the area of air pollution by vehicular traffic. The framers of Rule 116 must be taken to be fully conscious of the ever-increasing menace of smoke pollution on roads and in order to check the same and in order to provide further safeguards in this behalf they introduced Rule 116 on the Statute Book. The intention could in no way be said to waters down Rule 115. Moreover, prosecutions for violation of Rule 115 must have been going on much prior to Rule 116 since it was brought on the Statute Book in 1993. Thus, it can not be said that by bringing into force Rule 116, the Legislature has watered down what was already in existence in the shape of Rule 115. The object of bringing Rule 116 into force was to tackle the problem of air pollution through motor vehicles more vigorously.

In State v. Urmī Ghoshal,¹⁹⁵ the Court held that Section 110 of the MV Act empowers only the Central Government to frame rules with regard to air and sound pollution under Section 110(g) and (h) of the Act. Therefore, Rule 258 of the West Bengal Motor Vehicle Rules, 1989, laying down emission standards for motor vehicles, appears to be beyond the power and competence of the State of West Bengal. In this case, the Calcutta High Court referred to the decision of Delhi High Court in State v. R.P. Sharma¹⁹⁶ and held:

With great respect, it seems that the attention of the Division Bench perhaps has not been invited to the provisions of Rule 116(6) which clearly lays down that before proceeding to levy a penalty under Section 190(2) by the authorities, the incumbent should be given some days’ notice to get the vehicle rectified and if he fails to comply then alone a penalty under Section 190(2) can be levied.

¹⁹⁵. AIR 2002 Calcutta 192.
¹⁹⁶. supra note 193.
The law laid down by the Calcutta High Court appears to be sound. As per Rule 116(6) of the MV Rules, an opportunity has been given to the driver or the person in charge of the vehicle to comply with the provisions of sub-rule (2) of Rule 115 within a period of seven days and produce 'pollution under control' certificate. If he fails to do so only then he should be liable for the penalty prescribed under Section 190(2). In case of failure, other rigorous steps have been laid down under sub-rules (7), (8) and (9) of Rule 116 itself according to which the certificate of registration of the vehicle may be suspended and in consequence any permit granted in respect of the vehicle under Chapter V or Chapter VI of the MV Act should also be deemed to have been suspended until a fresh 'pollution under control' certificate is obtained.

Therefore, if a vehicle is found emitting pollution, suddenly to serve the owners or person in charge of the vehicle with compounding slip and recover money and impose penalty in terms of Section 190(2) of the Act, does not seem to be a step warranted by law. According to the prescribed procedure, the authorities are under an obligation to give one week’s time to the owner or the person in charge of the vehicle to get the same repaired and bring the emission within the permissible limit. However, a decision of the apex Court is needed on the issue to clarify the position.

In *M.C. Mehta v. Union of India*, the Court observed that the norms fixed under the MV Act are in addition to and not in derogation of the requirements of the Environment (Protection) Act, 1986.

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There are around 30 million vehicles in India and the vehicular pollution is growing 15-17 percent annually. Average number of road accidents per thousand of vehicles is around 23, which is one of the highest in the world.\textsuperscript{198} Proper implementation of the provisions of the Act and the rules made thereunder is necessary in order to overcome this worsening situation. To control vehicular pollution and protect environment is primarily the function of the Executive. It is their obligation to devise suitable measures and provide machinery for rigid enforcement of such measures as are necessary to curb the menace of chaotic traffic conditions and vehicular pollution with a view to ensure the welfare of general public. The inaction on the part of the executive, however, compels the Court to issue certain directions from time to time in general public interest. It is the obligation of the State to ensure that those directions are complied with.\textsuperscript{199} The orders of the Court can not be treated lightly. They are meant to be complied with in letter and in spirit.\textsuperscript{200}

\section*{6.19 Conclusion}

This chapter has examined the existing legal regime in India with reference to general laws and judicial attitude concerning substances and processes which are hazardous in nature. These legislations share certain common characteristics. The foremost is that they institute a regime of criminalisation seeking to penalise non-conforming behaviour with criminal sanctions of imprisonment, of fine or both. In addition to the criminal sanctions, most of the laws provide for a regime of licensing and through this regime seek to regulate the handling of hazardous substances. Thirdly, in order to enforce the licensing

\begin{itemize}
\item \textsuperscript{198} Kavita Bajeli Datt, \textit{Study says Delhi traffic getting worse, mishaps rising}, Asian Age (New Delhi) dated 14.05.2001: CSE-India Green File, No. 161 at 64.
\item \textsuperscript{199} See M.C. Mehta \textit{v. Union of India}, AIR 1999 SC 301.
\item \textsuperscript{200} \textit{supra} note 195.
\end{itemize}
provisions, they create a regiment of inspectors who operate as front line officers. The efficacy of the system comes to depend upon the efficacy of the inspectors. The inspectorate is also the weakest link as the inspector is a low paid officer directly exposed to the influence of such parties having pecuniary interest in their ways of handling such substances. The usual provision is to provide for cancellation or suspension of licences in case of infraction of the law. Justice is sought to be ensured to the affected interest by the provision of an appeal to an officer or authority higher than the licensing authority but nevertheless, the part of the executive. Some legislations provide for consultation with affected interest before enforcing the rules. But in practice the consultation is neither adequate nor public. One apparent lacuna in all these legislations is that no room is provided at all for participation of either the public or non-governmental organisations (NGOs). Because of this, the laws appear to be a sheer executive discretion and the kind of public support which is needed to make such laws effective is just missing.

The unmindful technological development, rapid growth of industrialisation and urbanisation are now assuming dangerous proportions throughout the world. These activities result in the production of tons of hazardous wastes and release of toxic chemicals which in turn have become a serious threat to human health and the environment. The improper disposal of hazardous waste, over exhaustion of irreplaceable natural resources and irrational use of pesticides and other hazardous chemicals have virtually destroyed the assimilative capacity of the environment. The results are disastrous. Overuse of science and technology and throw away culture of the present day society have already brought untold miseries to mankind. It has now become a fundamental duty,
more than ever, of every State and each individual to protect the environment from activities and processes that are hazardous in nature.

At international level, efforts have been made to protect and preserve the environment and ecological balance against hazardous substances. However, these efforts are largely formal. They lack missionary zeal. The basic principle of state responsibility in this regard is contained in the maxim 'Sic Utero tuo at alienum non leadas', which means do not use your property in a manner so as to cause injury to that of others. This principle of state responsibility which was codified in Principle 21 of the Stockholm Conference, 1972 had its origin in the famous case of United States v. Canada (known as Trail Smelter case).

In this case, the emission of noxious gases from a Canadian (Trail Smelter) company smelting lead and zinc in Canada caused harm to land and other interests of the State of Washington in the USA. Canada was held liable on the ground that no State has a right to use or permit the use of its territory in a manner so as to cause injury to the territory or property of other State. The same principle was affirmed by the International Court of Justice in United Kingdom v. Albania (known as Corfu Channel Case) where the Court held that every State is obliged 'not to knowingly allow its territory to be used for acts contrary to the rights of other States'.

Besides the above stated principle, the legal international regime relating to prior informed consent procedure, collection and dissemination of information,
mandatory environmental impact assessment, incorporation of ‘precautionary’
and ‘polluter-pays’ principles, strengthening the role of NGOs and the use of
best available techniques etc. further highlight the components of international
policy for the proper control and management of hazardous substances.
Besides international efforts, the legal and regulatory measures adopted in
developed countries like USA and UK, may also serve as important guidelines
for a developing country like India in evolving an effective and comprehensive
system for the control and management of these substances.

In India, general legislative measures have been taken to protect human health
and the environment against hazardous substances which exhibit a variety of
behavioural patterns and modes of action. Besides general laws, special
legislative and administrative measures have also been taken in the shape of
different environmental Acts and the rules made and notifications issued
thereunder. These efforts indicate that India is consistently trying to match
global developments in this regard. Although the legislative schemes in India do
overlap to a certain extent so far as problems of scale and definition of
hazardous substances and the role of administration are concerned, rigid
implementation and enforcement of these schemes is the need of the hour. This
shall ensure that the manufacture, use and transport of hazardous products and
substances are properly regulated. Paying attention to this vital aspect is needed
because these substances endanger the very existence of human race.

Indian environmental law as such has developed considerably during the last
two decades. Careful judicial thinking has contributed significantly to this
evolution. As regards the specific issue of proper control and management of
hazardous substances, the Indian judiciary has played a key role in this respect also. Where there are loopholes in the existing legal system and administration is not well equipped to meet the challenge, the judiciary has adopted an activist role. Various decisions of the High Courts as well as the Supreme Court of India forbidding hazardous activities in residential areas, compelling the municipal authorities to perform their statutory obligations, compelling the industrial units to set up effluent treatment plants and to install air-pollution control devices, appointing committees to monitor the ground situation and directing the closure / relocation of hazardous industries and rehabilitation measures etc. are some of the significant cases highlighting judicial activism. This reflects that India is continuously making efforts to overcome the problems associated with the use and handling of hazardous substances. What is really needed is a genuine will on the part of enforcement agencies.

Despite the existence of environmental policy, the Constitutional mandate, flurry of legislations and administrative infrastructures, the problems associated with hazardous substances still remain a grave cause of concern in our country. Legislation and policy pronouncements appear to be ineffective due to a weak enforcement machinery. The enforcement agencies must ensure that laws are enforced in spirit and these substances are not permitted to be mixed with the natural resources, such as, water and air. Strengthening of enforcement agencies and fixing definite responsibilities, introduction of clean technologies, creating awareness among the masses, peoples participation in decision making, involvement of NGOs, and imparting necessary education are some of the aspects which require immediate attention. In fact, a multi-disciplinary
approach is needed to tackle the problem. Moreover, since the laws relating to hazardous substances are found scattered in varying laws in India, the enactment of a comprehensive law on the subject has also become imperative.

The next chapter discusses the issues relating to liability and compensation in respect of hazardous substances.